IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 33327 of 2006(P)

AGAINST THE ORDER IN IA 4256/06 IN
OS.162/2004 of PRINCIPAL SUB COURT,PARAVUR

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PETITIONER:

BRANCH MANAGER, DIRECT AGENTS BRANCH,
ORIENTAL INSURANCE CO. LTD., IST FLOOR,
P.M.A.BUILDINGS, BANK JUNCTION,
ALUVA-683 101, REP. BY ITS DIVISIONAL MANAGER,
DIVISIONAL OFFICE, ALUVA.

BY ADV. SRI.K.J.SAJI ISAAC
DR.ELIZABETH VARKEY

RESPONDENTS:

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1. DEVAKI, AGED 55 YEARS,
W/O.NARAYANAN, KONNANPARAMBIL HOUSE,
PUTHENVELIKKARA, PUTHENVELIKKARA VILLAGE,
PARUR.

2. JEENAMOL,
AGED 23 YEARS, D/O.NARAYANAN,
KONNANPARAMBIL HOUSE, PUTHENVELIKKARA,
PUTHENVELIKKARA VILLAGE, PARUR.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 33327/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE I.A. NO.4256/2006 IN O.S. NO.162/2004 BEFORE THE SUB COURT, N.PARUR.

/TRUE COPY/

P.A. TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 33327 of 2006

Dated this the 13th day of September , 2007

JUDGMENT

This writ petition under Article 227 of the Constitution has been filed seeking writ of certiorari to quash the order passed by the learned Subordinate Judge on 13.12.2006 in I.A. No.4256/2006 in O.S. No.162/2004. Copy of that order is not produced. But it is averred in the writ petition that the reason on which the order was passed was that the documents mentioned in the summons are easily available from the Court and Police Station and hence it is not necessary to summon them.

2. Heard Smt. Elizabeth Verkey, the learned counsel for the petitioner and Sri. Sri.P.B.Krishnan the learned counsel for the respondents. Smt.Elizabeth Verkey submits that it was not proper on the part of the learned Subordinate Judge to have dismissed the application without granting sufficient time to the petitioner for obtaining copies of the documents. The counsel submitted that after framing the issues on 8.8.2005, the case was posted on 8.8.2006 for steps. On 8.8.2006 the case was again posted 8.8.2007 for steps. In the meanwhile even as the case stood posted for steps on 8.8.2007

the suit was suddenly included in the special list for trial on 8.12.2006. On 8.12.2006 the plaintiff respondent filed an application for calling for certain documents. The learned Munsiff allowed the application filed by the plaintiff even as he dismissed the application filed by the petitioner defendant. Counsel submitted that on 13.12.2006 when the suit stood posted for trial it was submitted that case can be passed over to be taken up after the roll call is over, since the petitioner's Advocate is to come from Ernakulam. The learned Munsiff did not become obliged to do that.

3. Highlighting all these aspects, the learned counsel requested that the order passed by the learned Subordinate Judge on 13.12.2006 in I.A.4256/2006 in O.S.162/2004 be set aside and sufficient opportunity be given to the petitioner to recall the witnesses already examined and cross examined. Sri.P.B.Krishnan the learned counsel for the respondents, resisting the above submission, submitted that the petitioner himself is to blame for not having produced copies of the relevant documents even though sufficiently long period had been granted by the court below for steps. Counsel submitted that if the reliefs sought for are granted now, the respondents will be prejudiced since their witnesses including the principal witness PW1 had been examined and the case stood posted at a stage when an

Advocate Commissioner had been appointed for recording the defence evidence.

Having considered the rival submissions addressed at the bar and the circumstances attending on this case, I am of the view that the petitioner can be given a little more time to obtain copies of the documents referred to in I.A.4256/2006 for production before the court below. Accordingly, I dispose of the writ petition directing the learned Subordinate Judge to relist the suit for trial during the first week of December 2007. It is for the petitioner to obtain certified copies of the various documents mentioned in I.A. 4256/2006 in the meanwhile and produce them before the court below. The petitioner is permitted also to file an application before the court below for recalling the witnesses already examined. If such application is filed by the petitioner within three weeks from today, the learned Subordinate Judge will pass appropriate orders on that application ensuring that all the expenses including the expenses towards Commission Batta for examining witnesses will be paid by the petitioner only and that such expenses will not be treated as part of the ultimate costs of the suit.

PIUS C. KURIAKOSE,

JUDGE.

dpk

Dpk